

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Lowell Regional Wastewater Utility

Enforcement Document Number:
00008762

Issuing Bureau: BWR

Issuing Region/Office: NERO

Issuing Program: WPC

Primary Program Cited: WPC

Subprogram(s) Cited: NPDES

Suffix(es): NT

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, MA 01887.

2. The Lowell Regional Wastewater Utility ("LRWWU" or "Respondent") is a branch of the City of Lowell, a municipal corporation in the Commonwealth of Massachusetts with a place of business and a mailing address at 451 First St. Blvd. (Route 110), Lowell, MA 01850. Respondent's mailing address for purposes of this Consent Order is Lowell Regional Wastewater Utility, City of Lowell, 451 First St. Blvd. (Route 110), Lowell, MA 01850

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 21, §§ 26-53, the Surface Water Discharge Permit Regulations at 314 CMR 3.00; and the Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Discharges at 314 CMR 12.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. The following facts and allegations have led MassDEP to issue this Consent Order:

A. The Respondent owns, operates, and maintains a municipal sewer system that collects

wastewater from the connected properties of the City and accepts wastewater from the towns of Tyngsboro, Dracut, Tewksbury and Chelmsford for treatment and disposal at the Duck Island Wastewater Treatment Plant. LRWWU also owns and operates nine combined sewer overflow ("CSO") outfalls, which discharge combined stormwater and wastewater when wet weather flows in the combined sewer system exceed the capacity of the collection system.

B. The Clean Waters Act, M.G.L. c. 21, § 43 (2), provides:

No person shall discharge pollutants into waters of the commonwealth nor construct, install, modify, operate or maintain an outlet for such discharge or any treatment works, without a currently valid permit issued by the director. No person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in discharge of pollutants into waters of the commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection, without a currently valid permit issued by the director, unless exempted by regulation of the director.

C. Similarly, the regulations at 314 CMR 3.03(1) state. in relevant part:

No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. c. 21, sec. 43 and 314 CMR 3.00 unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate or maintain an outlet for such a discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03(1) and written approval from the Department for such activity, unless exempted pursuant to 314 CMR 3.05....

D. The regulations at 314 CMR 3.02 defines "discharge" or "discharge of pollutants" in relevant part to be:

... any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any source, including, but not limited to,...discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a POTW; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works....

E. The regulations at 314 CMR 3.02 define a "publicly owned treatment works" or "POTW" as

... any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of liquid nature which is owned by a public entity. A POTW includes any sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

F. The regulations at 314 CMR 3.02 define "treatment works" as

... any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal.

G. The regulations at 314 CMR 3.02 define "pollutant" to be

... any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the Commonwealth.

H. The regulations at 314 CMR 3.02 define "Waters of the Commonwealth" to be

...all waters within jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters.

I. The regulations at 314 CMR 12.03(7) state:

No person responsible for the operation of treatment works shall permit wastes to bypass the wastewater treatment facility or any portion, unit or part thereof in violation of a discharge permit, except when approved by the Department due to design limitations. If bypassing due to an emergency condition occurs, the Department shall be notified immediately in accordance with 314 CMR 12.03(8). Such notification or its acknowledgement shall not be construed as permission by the Department to discharge wastes in contravention of the Massachusetts Water Quality Standards.

J. The Merrimack River is listed as an impaired water body for pathogens and *E. coli* in the federal Clean Water Act ("CWA") Section 303(d) list of impaired waters. Designated uses of the River downstream of the subject discharge location include primary and secondary contact recreation, harvesting of shellfish, as well as being a source of drinking water for Tewksbury, Methuen, Lawrence, and Andover. Untreated sanitary sewage discharges increase risks of exposure to the general public and impacts wildlife in the ecosystem.

K. Respondent notified MassDEP of a sanitary sewer discharge incident in an e-mail on August 22, 2019 and later submitted a sanitary sewer overflow ("SSO") report/Bypass notification form on August 26, 2019. In the SSO Report Form and associated email, Respondent included the following information:

- i. The discharge was related to an ongoing construction project at the Rosemont Pump Station ("RPS"). The project required bypass pumping of residential sewage around the existing RPS, which was being replaced in kind. Bypass pumps were intended to convey sewage from the station's influent manhole to a nearby sewer manhole in order to convey sewage downstream to the North Bank Interceptor and Beaver Brook Station.
 - ii. The discharge to the Merrimack River was discovered at 10:30 AM on August 21, 2019 and had ceased by 9:00 PM on that same date;
 - iii. The event occurred due to "misinterpretation of local utility plans" which resulted in wastewater flows being conveyed to a storm drain manhole; and
 - iv. An estimated total of 500,000 gallons of untreated wastewater was discharged between July 17, 2019 and August 21, 2019. The estimate was based on a review of pump station run times and capacity as well as the dates of the bypass connection and subsequent diversion of bypass flows to the sewer system.
- L. On August 30, 2019, in response to MassDEP comments on the SSO Report Form, Respondent submitted a more detailed technical memo, summarizing the SSO event. The memo included the following information:
 - i. A plan and profile of the sewer system and drain system in the location of the RPS and SSO;
 - ii. An indication that the record plan did not include system modifications made during 1983 sewer separation work, which work included converting former sewer lines to storm drain lines; and
 - iii. A listing of the Respondent's response actions to the SSO event that allegedly included:
 - 1. Redirection of the wastewater flows soon after the Respondent was aware of the discharge;
 - 2. Cleaning of the affected discharge area by collection of physical debris;
 - 3. Revision of the Respondent's GIS records to ensure that the sewer and drain systems are accurately depicted; and
 - 4. Revision of the Respondent's procedures to authorize contractors to affect a sewer system bypass so that there will be no recurrence of such an event.
- M. By allowing the discharge of untreated wastewater to the Merrimack River, Respondent violated the provisions of M.G.L. c. 21, § 43 (2) and 314 CMR 3.03(1).
- N. By bypassing wastewater flow without treatment and discharge at the Duck Island Wastewater Treatment Plant, Respondent violated the provisions of M.G.L. c. 21, § 43 (2) and 314 CMR 12.03(7)

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

5. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

6. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

7. Respondent shall perform the following actions:

- A. Within 60 days of the effective date of this Consent Order, Respondent shall submit a report identifying additional review procedures implemented by the City and its contractors before bypassing of flows associated with construction related activities.
- B. Within 90 days of the effective date of this Consent Order, Respondent shall submit written information to MassDEP on the Respondent's sewer, combined sewer, and storm drain infrastructure, including:
 - i. Mapping of the Respondent's sewer, combined sewer, and storm drain systems, and a reference to sources used to develop mapping of the infrastructure;
 - ii. A description of the Respondent's GIS system in regard to the sewer, combined sewer, and storm drain systems, noting the extent and level of detail included in the GIS data system;
 - iii. A description of the Respondent's computerized maintenance management system (CMMS), and tracking of inspection and maintenance activities;
 - iv. A written procedure and schedule that describes Respondent's long-term plan to ensure that all sewer, combined sewer and storm drain systems are accurately mapped.

8. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:

Kevin Brander, P.E., Section Chief
Wastewater Management Section
Massachusetts Department of Environmental Protection
Northeast Regional Office

205B Lowell Street Wilmington, MA 01887
Kevin.Brande@mass.gov

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

9. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

10. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

11. The Commonwealth assesses a civil administrative penalty in the amount of **Eight Thousand Six Hundred Twenty-five and 00/100 dollars (\$8,625.00)** for the violations identified in Part II above, as follows:

A. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth **Five Thousand and 00/100 dollars (\$5,000.00)**; and

B. MassDEP hereby agrees to suspend payment of the sum of **Three Thousand Six Hundred Twenty-Five and 00/100 dollars (\$3,625.00)**; provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within 1 year of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of **Three Thousand Six Hundred Twenty-Five and 00/100 dollars (\$3,625.00)** within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

12. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. In addition to the penalty set forth in this Consent Order (including any suspended penalty), Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates any provision of this Consent Order:

For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$250 per day
16 th through 30 th days	\$500 per day
31 st day and thereafter	\$1,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The

payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. The Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended, or stipulated penalties and/or any associated fees. **The Respondent has four options for payment;**

Option 1: certified check;

Option 2: cashier's check;

Option 3: on-line payment using a credit card;

Option 4: electronic transfer.

Option 1 and 2:

Certified or cashier's checks must be made payable to the Commonwealth of Massachusetts and received **within 30 days of the effective date of this Consent Order.**

If payment is made by certified check or cashier's check, the Respondent shall clearly print on the face of its payment Respondent's full name, the enforcement document number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

(IMPORTANT NOTE: **DO NOT INCLUDE THE SIGNED ACOP WITH PAYMENT BY CHECK**)

Option 3:

On-line Payment Using Credit Card

Your prospective BILL will contain information necessary to pay on-line by credit card. When you receive your BILL:

LOG ONTO THE MassDEP e-PAYMENT WEB SITE AT:

[HTTPS://WWW.MASSPAYS.COM/dep](https://www.masspays.com/dep)

On-line payment using credit card is due **within 30 days of the effective date of this Consent Order.**

(If a BILL (invoice) is not received within 10 days of the effective date of the consent order, you should contact The Revenue Department at 617-292-5668 to obtain a copy of your BILL (invoice))

Option 4:

Electronic Funds Transfer

Respondent must complete the enclosed form "Electronic Funds Transfer Request" found on the last page of this document and, **within 10 days of the effective date of this Consent**

Order, submit payment request to Director, BAS Division of Fiscal Management via Facsimile at the MassDEP Revenue Number: 617-556-1049 or via mail to:

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

21. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

22. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the subject location(s) for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

23. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

SPECIAL INSTRUCTIONS:

Your two **signed copies of the Administrative Consent Orders** with Penalty (ACOP) must be delivered, for execution (signature) by MassDEP, to the following address:

Heidi M. Zisch, Counsel
MassDEP-OGC-NERO
205 B Lowell Street
Wilmington, Massachusetts 01887

MassDEP will return **one signed copy** of the ACOP to you after MassDEP has signed, provided you have followed the above instructions.

Payment will be due, pursuant to the instructions outlined within the ACOP after you receive your fully executed copy.

PLEASE DO NOT INCLUDE YOUR PAYMENT WITH THE SIGNED ACOPs SIGNED ACOPS ARE TO BE SENT TO THE ABOVE ADDRESS.

Please call Helen Howard at (617) 292-5668 if you have questions regarding payment and/or instructions.

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ACOP # 00008762
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Consented To:
City of Lowell

By: Mark A. Young

Mark Young
Executive Director
Lowell Water Utility
815 Pawtucket Boulevard
Lowell, MA 01852

Date: FEB 26, 2020

Federal Employer Identification No.: 046 001 396

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Eric Worrall

Eric Worrall
Regional Director
MassDEP Northeast Regional Office
205 B Lowell Street
Wilmington, Massachusetts 01887

Date: 3/2/20

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(Respondent Letterhead required)

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108
Revenue number: 617-292-5668
Fax number: 617-556-1049

RE: Electronic Funds Transfer Request
[Respondent fills in Enforcement Document Number]

Director, BAS Division of Fiscal Management:

In order to complete a wire transfer for payment of the penalty assessed under (list enforcement number here), (put Respondent name here) requests the following information:

DEP's legal address,
DEP's Federal Tax Identification Number,
The name and address of DEP's bank,
DEP's account name and number, and
The ABA/routing number for DEP's account.

Please mail or fax this information to:
Respondent's contact name:
Address:

Revenue Number: 617-292-5668
Fax number: 617-556-1049

Sincerely,

Signed:
Print name:
Title:
Work number:

Date: